

<p>DISTRICT COURT, ADAMS COUNTY, COLORADO</p> <p>Adams County Justice Center 1100 Judicial Center Drive Brighton, CO 80601</p> <hr/> <p>REBECCA BRINKMAN AND MARGARET BURD, <i>et al.</i></p> <p>Plaintiffs,</p> <p>v.</p> <p>KAREN LONG, in her official capacity as Clerk and Record of Adams County, <i>et al.</i>,</p> <p>Defendants.</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>JOHN W. SUTHERS, Attorney General DANIEL D. DOMENICO, Solicitor General* MICHAEL FRANCISCO, Assistant Solicitor General* KATHRYN A. STARNELLA, Assistant Attorney General* Ralph L. Carr Colorado Judicial Center 1300 Broadway, 10th Floor Denver, CO 80203 Telephone: 720.508.6551 Email: dan.domenico@state.co.us; michael.francisco@state.co.us; kathryn.starnella@state.co.us Registration Numbers: #32083, #39111, #43619 *Counsel of Record</p>	<p>Case No. 13CV032572 (Consolidated with 14cv30731, Denver)</p> <p>Div.: C</p>
<p>REPLY TO DENVER OBJECTION TO EMERGENCY MOTION FOR INJUNCTION</p>	

Incredibly, the Denver Clerk & Recorder has objected to the State of Colorado’s emergency motion by claiming the Denver Clerk’s issuance of same-sex marriage licenses was “not litigated or considered,” was “an issue which was **never** before this Court,” and was “not addressed by this Court’s Summary Judgment Order.” Why, then, was the Denver Clerk part of this litigation at all? The only reason the Denver Clerk has been a party to this case is to compel the issuance of

same-sex marriage licenses. The Denver Clerk's knowing and intentional disregard of this Court's stay of its own order derogates the authority of this Court and is in disrespect to the judicial process and all parties participation before this Court.

The Denver Objection thus makes two points: (1) there is no factual basis for an injunction, and (2) the law of Rule 62, or any other authority, does not allow an injunction to issue. Both objections are unsound. An injunction should issue.

I. The issuance of same-sex marriage licenses by the Denver Clerk has always been an integral part of this litigation.

The only reason the Denver Clerk & Recorder has been part of this litigation is to require her to issue same-sex marriage licenses to the Plaintiffs. As the Denver Clerk previously noted, her personal views on the constitutionality of same-sex marriage are independent of her legal role and her reluctant refusal to issue same-sex marriage licenses. Indeed, the very relief sought by Plaintiffs in this case has been, in part, the issuance of same-sex marriage licenses. The Denver Clerk's actions in this regard go to the core of the dispute.

The Complaint in the Denver case (consolidated here) repeatedly addresses the Denver Clerk's issuance of same-sex marriage licenses:

- ¶ 15 (“plaintiffs seek: ... (b) a permanent injunction (i) preventing defendants from denying the Unmarried Plaintiffs the right to marry”)
- ¶ 16 (“on February 18, 2014, the couple appeared in person at the Office of the City and County Clerk of Denver to apply for a marriage license. Despite believing that these laws are unconstitutional, Debra Johnson, in her official capacity ... refused their marriage license application”)
- ¶ 17 (same)
- ¶ 18 (same)
- ¶ 19 (same)
- ¶ 20 (same)
- ¶ 27 (Describing Denver Clerk role in case as issuing marriage licenses)
- ¶ 57 (addressing issuance of marriage licenses)
- ¶ 87 (“As the Denver County Clerk and Recorder, defendant Johnson ensures compliance with Colorado’s exclusion of same-sex couples from marriage by, for example, refusing to issue marriage licenses to same-sex couples, despite believing that these laws are unconstitutional. This violates the plaintiffs’ fundamental right to marry...”)
- ¶ 107 (“As the Denver County Clerk and Recorder, defendant Johnson ensures compliance with Colorado’s laws barring same-sex couples from

marriage by, for example, denying same-sex couples marriage licenses, despite believing that these laws are unconstitutional. This violates the constitutional rights to equal treatment for the Unmarried Plaintiffs.”)

- Relief ¶ 4 (“Requiring defendants Hickenlooper and Johnson in their official capacities to permit issuance of marriage licenses to the Unmarried Plaintiffs”)

The reason the Denver Clerk has been in this litigation is because the Plaintiffs were denied a marriage license and request relief *requiring the Denver Clerk to issue licenses*.

The Denver Clerk’s objection also ignores the substance of this Court’s Summary Judgment Order. In particular, footnote 18, where this Court expressly contemplated the chaos and legal uncertainty caused by a clerk issuing marriage licenses without a final court order, leaves no doubt that the Denver Clerk’s actions are in direct contravention of this Court’s Order.

Instead of carefully considering this Court’s Order (directly binding on the Denver Clerk, as a party), the Denver Clerk points to the Boulder Clerk’s actions in unrelated litigation. In that litigation, only against the Boulder Clerk for a preliminary injunction at this stage, the State of Colorado has indeed been unable to, at this time, compel the Boulder Clerk to comply with state law. That case does not involve the Denver Clerk and is, at any rate, far from final. The denial of a temporary injunction against the Boulder Clerk (who was issuing licenses even *before* this Court’s Order) does not give a legal basis for the Denver Clerk to either (1) ignore this Court’s stay order, or (2) issue licenses contrary to state law.

Again, the State of Colorado through this request for an injunction, and the original motion for a stay, is not asking this Court to decide the merits of same-sex marriage. The injunction, like the original stay, are designed to respect the rule of law and the orderly judicial process that all parties must follow. Granting an injunction to enforce the terms of the stay will not prevent the ultimate merits of this Court’s order (about the constitutionality of same-sex marriage) from being finally adjudicated in an undeniable, binding, court order. To act contrary to the rule of law, as the Denver Clerk (and Boulder Clerk) have done, will only serve to undermine the very process and result they seek – an order from courts that command obedience to a constitutional right.

II. The law resoundingly gives this Court authority to enjoin the Denver Clerk from disregarding this Court’s own judgment and stay.

The Denver Clerk and Recorder makes the rather incredible claim that this Court lacks the power under C.R.C.P. 62 to enter an injunction compelling compliance with its previous stay order. She asserts, wrongly, that this Court's summary judgment order "did not grant, dissolve or deny an injunction." Objection at 3. Denver's claim is unfounded for two reasons.

First, this Court's order *did* in fact deny an injunction. As the Court's own order states, the "Adco Plaintiffs sought a preliminary and permanent injunction mandating the Adams County Clerk and Recorder to issue a marriage license to the Adco Plaintiffs," Order at 6-7, and the "Denver Plaintiffs sought an injunction precluding enforcement of the laws." Order at 7. Ultimately, the Court declined to issue an injunction, stating "[t]his Court has found the Marriage Bans unconstitutional but has not issued an injunction, mandatory or otherwise." Order at 45. Denver's claim that the summary judgment order failed to rule on an injunction request is therefore plainly erroneous.

Second, Colorado's appellate courts have long held that C.R.C.P. 62 permits the district court the inherent discretion to grant an injunction to preserve the status quo pending appeal. Denver's misrepresentation to the contrary should be rejected. *See Woitchek v. Isenberg*, 151 Colo. 544, 379 P.2d 392, 394 (1963) (stating under Rule 62 "trial court could, in its discretion, suspend, modify, restore *or grant* an injunction" so long as appellate court has not granted a supersedeas) (quotations omitted; emphasis added); *id.* (holding "[a]n obvious reason for such recognition is that trial courts are equipped to conduct the trial process."); *Rivera v. Civil Serv. Comm'n*, 529 P.2d 1347, 1348, 34 Colo. App. 152 (1974) (holding Rule 62(c) "authorizes the trial court to enter orders which preserve the status quo, or otherwise protect the rights of the parties pending appeal . . .").

More importantly, what is lost on the Denver Clerk is that the State's emergency request for an injunction would have been wholly unnecessary had she abided by this Court's stay order. This court has jurisdiction and authority over the Parties to maintain the status quo and preserve its ability to provide legal relief. The State simply seeks an order compelling her compliance.

Respectfully submitted this 11th day of July, 2014.

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CERTIFICATE OF SERVICE

I hereby certify that on July 11, 2014, I electronically filed the foregoing Motion with the Integrated Colorado Courts E-Filing System (ICCES), which will send notification of such filing to counsel of record.

/s/ Michael Francisco
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